

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 10, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP868

Cir. Ct. No. 2013CV2411

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

PAULINE HAASS PUBLIC LIBRARY BOARD,

PLAINTIFF-APPELLANT,

v.

TOWN OF LISBON,

**DEFENDANT-THIRD-PARTY
PLAINTIFF-RESPONDENT,**

v.

VILLAGE OF SUSSEX,

THIRD PARTY-DEFENDANT.

APPEAL from a judgment of the circuit court for Waukesha County:
JAMES R. KIEFFER, Judge. *Reversed and cause remanded.*

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

¶1 NEUBAUER, C.J. The plaintiff Pauline Haass Public Library Board (the joint Library Board) was established by an Intermunicipal Agreement between the Town of Lisbon and the Village of Sussex to create and operate a joint library. Under the terms of the Intermunicipal Agreement, the agreement, which governs the joint Library Board, could be terminated upon “written notice to the other party not later than October 1st of any year ... that the agreement is to terminate at the end of the year in which notice is given.” In June 2014, after the joint Library Board commenced this action (the action) alleging that the Town was withholding assets that rightfully belonged to the joint Library Board, the Town passed a resolution terminating the “agreement effective December 31, 2014.” On November 11, 2014, the Village passed an ordinance repealing the section of its ordinance addressing a joint library committee and replaced it with a section establishing a new library board so as to ensure continuity from the joint Library Board to the new board. The ordinance was to “take effect immediately upon passage and posting or publication as provided by law.” Based on its reading of that ordinance, the circuit court concluded that the joint Library Board immediately ceased to exist and, thus, it could no longer maintain this lawsuit. We disagree and, therefore, reverse the judgment granting the Town’s motion to dismiss.

BACKGROUND

¶2 On August 28, 1985, Pauline Haass died. In her last will and testament, she bequeathed the residue of her estate to the Town for the purpose of establishing and maintaining a free public library or, if a free public library was already established in the Town, then “for the enlargement and enhancement of such facilities.” At the time of her death, Haass owned both real and personal property including farm land (the land). During the administration of her estate,

all of her property was sold and converted to cash with the exception of the land. In July 1987, Haass' personal representative conveyed the land and all of the other assets to the Town.

¶3 Since the Village had a public library which was available to the residents of the Town, the Town and the Village decided to establish the joint Pauline Haass Library. The Town and the Village adopted ordinances creating a joint library committee as authorized under WIS. STAT. ch. 43 (1987-88)¹. The Town and the Village then entered into an "Intermunicipal Agreement," effective January 1, 1988, to create and operate the joint library pursuant to ch. 43.

¶4 An agreement of two municipalities is required to create a joint library, and in turn, a joint library board. *See* WIS. STAT. § 43.53(1) ("[j]oint libraries may be created by any 2 or more municipalities ... by appropriate agreement of their governing bodies") and § 43.53(2) ("[j]oint library agreements ... shall contain provisions necessary to establish a library board under [WIS. STAT. §] 43.54").

¶5 In addition to creating the joint library, the Intermunicipal Agreement created a joint library board consisting of seven members: three from the Village, three from the Town, and the superintendent of the Hamilton School District. Boards appointed for joint libraries under WIS. STAT. § 43.53 shall consist of seven to eleven members and be representative of the populations of the participating municipalities, and be appointed by the head of the municipal

¹ All subsequent references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

governing body of each participating municipality. WIS. STAT. § 43.54(1m)(a)1. and 2.

¶6 In a section entitled, “Termination of Agreement,” the agreement provided that it would be “in effect from January 1, 1988, until December 31, 1996,” and would

continue thereafter from year to year on a calendar basis unless any party gives written notice to the other party not later than October 1st of any year commencing with the year 1996, that the agreement is to terminate at the end of the year in which notice is given.

¶7 The joint Library Board alleges that, since the establishment of the joint library, the Town has retained control of the land, leasing the land and using the rental income gained from it without the approval of the joint Library Board in contravention of Haass’ will and in violation of ch. 43 of the Wisconsin Statutes governing libraries. In October 2013, the joint Library Board commenced the action seeking a declaration of its rights to certain assets and for an accounting of all assets received by the Town from Haass’ estate.

¶8 On June 23, 2014, the Town passed a resolution terminating the “agreement effective December 31, 2014.”

¶9 On November 11, 2014, the Village passed Ordinance No. 785, repealing and recreating section 1.05 of chapter one of the Village Municipal Code, entitled Sussex-Lisbon Joint Library Committee, for the purpose of establishing a new library board (the Sussex Board). Ordinance No. 785 begins with whereas provisions stating that the Town had given notice that it was terminating the agreement effective January 1, 2015, and that the Village “will continue to fund and operate the Library after [the Town] withdraws.” Ordinance

No. 785's whereas clauses continue, "while the Library remains open and unchanged and will continue to continuously operate," the "organization and structure of the library board will change starting on January 1, 2015 to account for sole funding by Sussex and in keeping with the State Statutes." Thus, Ordinance No. 785 was "being enacted with sufficient time for the new Library Board to organize prior to January 1, 2015" to continue the work of administering and operating the library previously accomplished by the joint Library Board. The Village wanted to ensure that its ordinances were "in keeping with" state statutes, and sought "to ensure the Library [was] not in any way negatively impacted from the transition."

¶10 Ordinance No. 785 provides for the membership, organization, and duties and responsibilities of the Sussex Board. Specifically, "[o]riginally the Library Board shall consist of eleven (11) members with the makeup and appointment of the board following Wisconsin Statutes [§§] 43.54 and 43.60," with seven members "appointed by the Village President subject to approval by the Village Board," and "[t]he remaining members and numbers of the same are appointed according to Wisconsin Statute [§] 43.60(3)." Among the duties and responsibilities of the Sussex Board were "those ... delineated in Wisconsin Statute [§] 43.58 and in compliance with Wisconsin Statute [§] 43.52," such as the following: appointment of a library director; "the exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund"; the "exclusive charge, control and custody of all lands, buildings, money or other property devised, bequeathed, given or granted to, or otherwise acquired or leased by, the municipality for library purposes"; and the "audit and approv[al] [of] all expenditures of the public library." Sec. 43.58(1) and (2)(a). Ordinance No. 785

provides that it “shall *take effect immediately* upon passage and posting or publication as provided by law.” (Emphasis added.).

¶11 On November 19, 2014, in order to “ensure the continuous operation of the [l]ibrary” upon the Town’s withdrawal from joint administration and operation of the library, the joint Library Board passed a resolution transferring the administration and operation of the library including the joint Library Board’s interest in the action to the Sussex Board effective January 1, 2015.

¶12 On January 15, 2015, the Town moved to dismiss the joint Library Board from the action on the ground that the joint Library Board no longer existed as an entity as of November 11, 2014, the date the Village passed Ordinance No. 785. The joint Library Board and the Village opposed the Town’s motion arguing that the November 19, 2014 resolution transferred the joint Library Board’s interest in the action to the Sussex Board and, in any event, pursuant to WIS. STAT. § 803.10(3), the joint Library Board was permitted to continue the action. In reply, the Town argued that because the joint Library Board ceased to exist on November 11, 2014, it was without any power to transfer its interest in the action to the Sussex Board on November 19, 2014.

¶13 The circuit court agreed with the Town, dismissed the complaint of the joint Library Board, and a judgment was entered. The joint Library Board appeals from the judgment.

DISCUSSION

Statutory Interpretation and Standard of Review

¶14 We apply rules of statutory interpretation to the interpretation of ordinances. *Schwegel v. Milwaukee Cty.*, 2015 WI 12, ¶22, 360 Wis. 2d 654, 859

N.W.2d 78. “[T]he purpose of statutory [and ordinance] interpretation is to determine what the statute [or ordinance] means so that it may be given its full, proper, and intended effect.” *Id.* (alteration in original) (citing *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110); *Tesker v. Town of Saukville*, 208 Wis. 2d 600, 605-06, 561 N.W.2d 338 (Ct. App. 1997). Statutory interpretation begins with the language of the statute. *Kalal*, 271 Wis. 2d 633, ¶45. If the meaning of a statute is plain, the inquiry ordinarily stops, and the language is given its common, ordinary, and accepted meaning, except for technical or specially-defined words or phrases. *Id.*, ¶45. The context and structure of a statute are also important to the meaning of a statute. *Id.*, ¶46. “[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.*, ¶46. “If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* “[A] statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses.” *Id.*, ¶47.

¶15 The meaning of an ordinance is a question of law, which we also review de novo. *Tesker*, 208 Wis. 2d at 605.

Ordinance No. 785 is Ambiguous

¶16 The joint Library Board contends that, while the effective date of Ordinance No. 785 was November 11, 2014, the intent of the Village was to prepare for dissolution of the joint Library Board pursuant to the terms of the Intermunicipal Agreement and the state statutes governing joint libraries and joint library boards, on December 31, 2014.

¶17 The Town contends that the language in Ordinance No. 785 that “[t]his ordinance shall take effect immediately” is clear and unambiguous and means that Ordinance No. 785 went into effect immediately on November 11, 2014, the day Ordinance No. 785 was passed. As a result, the Town states, the Village unilaterally determined to dissolve the joint Library Board “on November 11, 2014.”

¶18 Ordinance No. 785 addresses only the library board, not the joint library established by the Intermunicipal Agreement. Thus, the Town appropriately acknowledges that the joint library “continued to operate until December 31, 2014.” The Town argues, however, that in the interim between November 11, 2014, and December 31, 2014, “the [j]oint Library Board lacked the authority to take any action as it related to the governance of the Joint Library.”

¶19 We conclude that Ordinance No. 785 is ambiguous in both stating that it was to “take effect immediately” and unilaterally dissolving the joint library board and/or creating a new library board for the joint library established in the Intermunicipal Agreement. When considered against the statutory requirements for joint municipal libraries, a new library board for the continued joint library could not take effect immediately. *Kalal*, 271 Wis. 2d 633, ¶46 (“statutory language is interpreted ... in relation to the language of surrounding or closely-related statutes.”). The statutes require administration of a joint library by a joint library board, with specific requirements for appointment by the head of the municipal governing body of each municipality, and for the joint Library Board to represent the populations of the participating municipalities. *See* WIS. STAT. §§ 43.53(2) and 43.54(1m)(a)1. and 2. Under the Town’s interpretation, the old joint library would operate without a joint board, or alternatively the new Sussex Board would govern the joint library, both in violation of state statutes. Thus, we

conclude that “take effect immediately” is ambiguous. Indeed, given the statutory backdrop, the Town’s interpretation would lead to absurd results. *See Kalal*, 271 Wis. 2d 633, ¶46 (statutory language is to be interpreted so as to “avoid absurd or unreasonable results.”). Thus, we look to other evidence to discern intent.

¶20 The whereas clauses contained in Ordinance No. 785 make clear the Village’s intent. *See Smith v. City of Brookfield*, 272 Wis. 1, 5, 74 N.W.2d 770 (1956) (stating that while the preamble of a statute may not be used to enlarge its scope and operation, it may be considered in determining the intent of the act); *see also* 2A NORMAN SINGER & SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47:4 (7th ed. 2007) (stating that in the United States the view is that the preamble may be resorted to in order to explain the enacting part of the statute and show the intention of the lawmaker). The whereas clauses demonstrate that the Village’s intent was to organize a new board, but that this new board would not begin governing the library until January 1, 2015. The whereas clauses make clear that the expectation and intent was preparatory, designed to create a new library board that would take over for the joint Library Board on January 1, 2015, when the new library funded solely by the Village would begin.

¶21 The Village stated in the whereas clauses that it sought to ensure its ordinances complied with the state statutes, and that the statutory requirements would be different after it was once again the sole funder for its library. *See* WIS. STAT. § 43.54(1) (governing composition of municipal library boards); *compare with* WIS. STAT. § 43.54(1m) (governing composition of boards appointed for joint libraries). Legal and logistical uncertainty were precisely what Ordinance No. 785 sought to avoid: Ordinance No. 785 makes clear, when read in conjunction with the whereas clauses, that the Village did not intend to leave the joint library without a governing library board, or to supplant a new board to govern the joint

library for less than two months, both of which would violate ch. 43's requirements. Ordinance No. 785 became effective on November 11, 2014, and the new Sussex Board was to be up and running when the joint Library Board and joint library ceased to exist after December 31, 2014.

¶22 As for the Intermunicipal Agreement, which was enacted pursuant to ch. 43 and governed the joint library, it further demonstrates that the intent of the Village was to create a library board that would take over for the joint Library Board on January 1, 2015. *See Kalal*, 271 Wis. 2d 633, ¶50. Under the Intermunicipal Agreement, written notice had to be given to the other party on or before October 1st in order to terminate the agreement in any calendar year. The actions of the parties clearly demonstrate that they understood this to be the meaning of the agreement. The resolution the Town passed on June 23, 2014, terminated the “agreement effective December 31, 2014.” In the whereas clauses to Ordinance No. 785, the Village noted that the Town had given notice that it was terminating the agreement effective January 1, 2015; that the organization and structure of the library board would change starting on January 1, 2015; that the library would continue to operate with sole funding from the Village after that date; and that the Village sought to ensure a smooth transition for the library and the new board. Thus, both the Town and the Village recognized that the Intermunicipal Agreement, including the provisions establishing the joint Library Board, could not be terminated immediately. This was not simply the “context” in

which the Village adopted Ordinance 785, it set forth its agreement to terminate pursuant to the required notice, which legally prevented unilateral termination.²

¶23 Thus, in this light, the ambiguous phrase “take effect immediately” applied to the date Ordinance No. 785 went into effect, but the substantive effect of Ordinance No. 785 was not to “immediately” terminate the applicable provisions of the Intermunicipal Agreement thereby unilaterally dissolving the joint Library Board.

¶24 The Town’s reliance on *State v. Rosenthal*, 179 Wis. 243, 191 N.W. 562 (1923), is inapt. In that case, the state legislature had passed one law conferring upon the mayor of Milwaukee the power to appoint a board of zoning appeals and, then, not long after, another law conferring that power on the common council of Milwaukee. *Id.* at 245. Seeing as the laws were “in conflict,” our supreme court held that the latter law “must be taken as the last expression of the legislature on the subject, and it operated to supersede all matter” in conflict with the earlier law. *Id.* at 245-46. Here, when appropriately interpreted, Ordinance No. 785 does not conflict with any prior ordinance of the Village establishing a joint library committee.

¶25 Therefore, in light of our interpretation of Ordinance No. 785, there was no basis for the circuit court to conclude that the joint Library Board ceased to exist on November 11, 2014, and, on that basis, to dismiss the Joint Board from

² While context usually refers to the relationship of the words at issue to other provisions in the statute or to other statutes, context can also mean the factual setting in which the words are to be applied. *Juneau Cty. Star-Times v. Juneau Cty.*, 2013 WI 4, ¶42, 345 Wis. 2d 122, 824 N.W.2d 457.

the action. Accordingly, we reverse the judgment granting the Town's motion to dismiss the joint Library Board from the action.³

By the Court.—Judgment reversed and cause remanded.

Not recommended for publication in the official reports.

³ Because the circuit court did not reach the issue of whether WIS. STAT. § 803.10(3) applies to the joint Library Board's transferred claim to the Sussex Board, given that the joint Library Board existed on November 19, 2014, but was dissolved on December 31, 2014, we decline to do so here.

